The DIFC Courts: 
A Review of Key Decisions in 2009

Philip Punwar*

1 INTRODUCTION

The Judicial Authority at the Dubai International Financial Center, otherwise known as the DIFC Courts or Court, is a civil and commercial court made up of the Court of First Instance and the Court of Appeal. It is an English language, common law court, modeled on the English Commercial Court. There are currently over 400 lawyers registered to appear in the DIFC Court, a significant number of whom are resident overseas.

The Court has resident and non-resident judges. The non-resident judges are Chief Justice Michael Hwang SC (who succeeded Sir Anthony Evans QC on the completion of the latter’s five year term as Chief Justice on 16 June 2010), Deputy Chief Justice Sir Anthony Colman QC, Justice Sir John Chadwick QC, Justice Tan Sri Dato Seri Norma Yaakob and Justice David Williams QC. The resident judges are H.E. Justice Omar Al Muhairi and H.E. Justice Ali Al Madhani.

The DIFC Court got off to a slow start after its establishment in December 2004. The first case was eventually commenced in May 2006 (CFI 1/2006: Dutch Equity Partners v Daman Real Estate Capital Partners) and the first trial (CFI 1/2006) held in late January 2007. Thereafter, the second trial (CFI 8/2007: Ithmar Capital v 8 Investments Inc & Others) was not held until 18 months later, in June 2008. The third trial (CFI 4/2007: Arabtec Construction LLC v Ultra Fuji International LLC) followed in November 2008. The caseload of the DIFC Court has grown considerably since the end of 2008, in large part because of the Global Financial Crisis.

With a number of good judgments under its belt, the DIFC Court is a less uncertain forum: its judges’ styles and habits are very much easier to predict and understand. The DIFC Court’s Code of Conduct, which came into effect on 01 November 2009, should greatly assist in the development of a homogenous

* B.A. (Hons) (Birmingham), Dip Law (City), M.A. (SOAS), Barrister (Inner Temple), Dip ICArb, FCIArb, Chartered Arbitrator, CEDR Accredited Mediator, Registered Advocate and Practitioner (DIFC Courts), Solicitor Advocate (England & Wales). Partner, Fulbright & Jaworski LLP, Dubai.
DIFC Court Bar in due course, whilst the Court’s Pro Bono Scheme should also enable the Court to serve the interests of justice more democratically.

2 KEY DECISIONS IN 2009

The following cases from 2009 are particularly noteworthy:

(i) **The Jurisdiction of the Court**:


(ii) **The DIFC Employment Law 2006**:


(iii) **The DIFC Arbitration Law 2008**:


(iv) **Freezing Orders**:


2.1 The Jurisdiction of the Court

CFI 17/2009: *Shihab Khalil v. Shuaa Capital Capital PSC*; Justice Sir Anthony Colman QC.

This is an important judgment, because it clarifies the jurisdiction of the Court as set out at Article 5(A)(1)(b) of Dubai Law No. 12/2004 (The Judicial Authority Law) and Article 19(1)(c) of DIFC Law No. 10/2004 (The Court Law).